

EXHIBIT G

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
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5 IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002
6 ANTITRUST LITIGATION 08-MDL-02002
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9 PHILADELPHIA, PA
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11 MAY 7, 2018
12 DAY FOUR
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14 BEFORE: THE HONORABLE GENE E.K. PRATTER, J.
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17 TRIAL TRANSCRIPT
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22 Official Court Reporter
23 Room 1234 - U.S. Courthouse
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(Transcript produced by mechanical shorthand via C.A.T.)

1 didn't it?

2 A. No. It -- I'll tell you exactly what happened.

3 Q. Well, my question is --

4 A. It wasn't a train wreck.

5 Q. In 2011 -- 2011, did -- Sparboe came back to the UEP,
6 right?

7 A. It came -- it came back to UEP after an ABC story ran
8 that the United Egg Producers -- nobody in our industry would
9 buy eggs from us. We had 75 trailer loads of eggs. Nobody
10 would buy eggs from us, but we had complied with every aspect
11 of the United Egg Producers Program right down the line, and
12 we had passed all of McDonald's audits for seven years. Every
13 audit was passed. Every aspect of our program was identical
14 to the UEP Program in every single step.

15 There were three individuals that were employed in
16 our company from the state of Pennsylvania, ironically, that
17 disappeared the day that story ran on UEP and we never heard
18 from them again. And many of the atrocities that happened in
19 that story were self-induced by these people. They were not
20 our long-term employees. They became employees of our company
21 just before that story ran.

22 Q. To be clear for the ladies of gentlemen of the jury,
23 2005, Sparboe dropped out of the Certified Program; correct?

24 A. Correct.

25 Q. Dropped out of UEP?

1 A. Correct.

2 Q. 2000- -- and you have your process verified program that
3 you say mirrors the UEP Certified Program except it doesn't
4 require the 100% rule, right?

5 A. Correct.

6 Q. You have certain facilities for those customers that
7 wanted to have minimum level of animal welfare standards, and
8 then for the others, you don't have those standards, correct?

9 A. I wouldn't say minimum level of standards. Our program
10 mirrored the UEP Program, and we were willing to dedicate that
11 program to every customer that wanted it. Absolutely.

12 Q. And in 2011, as you mentioned in response to my question,
13 there was an ABC story on 20/20 that featured Sparboe, right?

14 A. Correct.

15 Q. The Sparboe farm?

16 A. At the McDonald's farm.

17 Q. And the Sparboe farm at which employees were videotaped
18 abusing hens?

19 A. Three people who left the day of that story, who came on
20 to our employment two months before the story ran, they were
21 plants.

22 Q. And as a consequence of that story, Sparboe lost the
23 business with McDonald's, right?

24 A. And we had just passed their audit, three months before
25 completely passed their audit.

1 Q. Sparboe lost the business --

2 A. Correct.

3 Q. -- to McDonald's?

4 A. Correct.

5 Q. Lost it with Target?

6 A. Correct.

7 Q. It was a crisis, wasn't it?

8 A. It was a crisis.

9 Q. And after that, UEP came back -- I mean, excuse me --

10 Sparboe came back to the UEP and rejoined the Certified

11 Program, right?

12 A. We did. I don't know the exact date, but my sister had

13 no choice.

14 Q. Had no choice and in -- and today, Sparboe is a UEP

15 Certified producer; correct?

16 A. We are.

17 Q. Sir, you're aware that there's nothing in the UEP

18 Certified Program that says anything about expansion, right?

19 A. Correct.

20 Q. There's not a page, a paragraph, a single word that

21 limits any member of the UEP Certified Program from building

22 new henhouses?

23 A. Correct.

24 Q. Building new farms?

25 A. Correct.

1 specifications.

2 Q. And do you recall what -- at this time when the bidding
3 process started, what the Walmart specifications required
4 about animal welfare?

5 A. I do. At that point in time when the process started, we
6 had been using something that had been in place for several
7 years at Walmart. And in the specifications for animal
8 welfare it required that they participate in the FMI and the
9 UEP Certified process.

10 Q. And what was your understanding of why Walmart had that
11 requirement?

12 A. Yeah, so my understanding is that it had been in place
13 for several years. The suppliers in the industry for the most
14 part used it, and because of that I really didn't think about
15 it very much. It just kind of was in place and that's what we
16 started off the process with.

17 Q. Again, when you started off the process with those
18 specifications, did you have an understanding that those
19 guidelines, the UEP Guidelines, in particular, required a
20 producer to follow some 100% rule?

21 A. No, I had no idea of that.

22 Q. Now, was there a point during the 2008 bidding process
23 that Walmart changed its specifications with regard to animal
24 welfare?

25 A. Yes, we did.

1 Q. And when did that occur?

2 A. Yeah, so shortly after beginning the new bidding process,
3 where we had a more formal process, we identified some
4 potential suppliers in the industry, one of which was Sparboe
5 Farms, who were not using the Certified process. And after
6 having some time to work with them, we understood that they
7 were using different processes that we believed that were as
8 good or better than the UEP process. And so, therefore, we
9 changed our specs to include -- to not say it had to be FMI
10 and UEP, but that they could be something like that or better.

11 Q. Okay. So you referred to Walmart changing its
12 specifications?

13 A. That's correct.

14 Q. Let me hand you our first exhibit.

15 A. Okay.

16 Q. And for identification purposes, this is Plaintiffs'
17 Exhibit 246.

18 And, Mr. Airoso, let's just first see if you can
19 identify the exhibit.

20 A. I can.

21 Q. Okay. And what is this document?

22 A. Yeah, so this was a letter that was sent out by the egg
23 buyer, Clay Adams, to potential producers of eggs and/or
24 brokers who could sell eggs to Walmart, and he copied me on
25 this e-mail.

1 Q. Okay. And can you describe what type of information
2 Mr. Adams included in that?

3 A. Yes. So this e-mail was provided to the potential
4 suppliers to provide them with updates and information that
5 would help them in the bidding process, to include anything
6 that was new and different that we had made changes to as the
7 process was starting.

8 Q. So essentially, Walmart is responding to some questions
9 from its suppliers?

10 A. That is correct. Providing clarification.

11 Q. And this is an e-mail that you received at the time?

12 A. That is correct.

13 Q. And do you recall this e-mail?

14 A. I do.

15 Q. And in this e-mail, did Walmart provide the potential
16 suppliers with some information about specifications?

17 A. We did.

18 MR. OLSON: With that, Your Honor, we would move for
19 the admission of Exhibit 246.

20 MR. DESTEFANO: We would object to the first page on
21 hearsay grounds, Your Honor, the first page being an e-mail.

22 THE COURT: I can see it. It's a multi-page
23 document. You're only objecting to the first page?

24 MR. DESTEFANO: Yes.

25 MR. OLSON: Your Honor --

1 THE COURT: The first page does appear to be
2 hearsay.

3 MR. OLSON: Well, we would welcome a limiting
4 instruction. We're not introducing it for the truth of what's
5 stated.

6 THE COURT: What is the purpose of it?

7 MR. OLSON: The purpose is, as the witness
8 testified, this is when Walmart communicated to its suppliers
9 a change of specifications, and it's also when those suppliers
10 learned who else was in the bidding process. So whether any
11 of that was true or not, it -- the information was provided.

12 THE COURT: Well, you can use the remainder of the
13 exhibit, but there's still -- I'm not quite sure what the
14 point is of the transmittal e-mail?

15 MR. OLSON: Okay.

16 BY MR. OLSON:

17 Q. You can put that document aside.

18 Do you -- you referred to the information getting
19 out to Walmart's current suppliers. Do you recall when that
20 occurred?

21 A. In this e-mail it would have been when we would have made
22 the changes known to the specifications in or around late May
23 of 2008.

24 Q. And would this have been when Walmart's incumbent
25 suppliers learned that Walmart was considering using Sparboe

1 Farms as a new supplier?

2 A. That is correct. All the potential suppliers were sent a
3 single e-mail where they were all on copy. So all of the
4 current suppliers and incumbent suppliers would have known
5 about any additional potential suppliers like Sparboe Farms.

6 Q. And you also referenced Walmart communicating information
7 where they changed specifications.

8 A. That is correct.

9 Q. How did Walmart change its specifications with regard to
10 the animal welfare requirements?

11 A. Yes, specifically we changed the specification to say
12 that animal welfare needed to be the UEP Certified process,
13 equivalent or better.

14 In this case, in the e-mail, we said better, and
15 later on we changed that, but, yeah, UEP or better.

16 Q. So the change at this time was from not UEP and FMI
17 exclusively, but to --

18 A. A broader set of programs could be used as long as the
19 animal welfare requirements were as good as the UEP or better.

20 Q. Okay. All right, let's talk about Sparboe Farms a bit.

21 What did you know about Sparboe Farms at the time
22 you gave them an opportunity to bid for the business?

23 A. Yes, so Sparboe Farms was a new potential supplier to
24 Walmart, and they were not using the UEP Certified process.

25 So I felt it would be prudent to take the egg buyer and a

1 group of Walmart associates. We went up and visited them on
2 one of their farms. We met the team that ran
3 Sparboe's business at the time. We reviewed their farms,
4 looked at all of their facilities. And we also went through
5 their PVP program, and what they were going to do to certify
6 that food safety and animal welfare was being taken care of.
7 And we came back from that meeting feeling very good about
8 what they had done and that they could be a supplier to
9 Walmart.

10 Q. So you referred to the PVP program. Was that a program
11 that Sparboe had?

12 A. That's correct.

13 Q. And what was your general understanding of the PVP
14 program?

15 A. Yeah, so the PVP program was a program that was going to
16 be audited and is audited by the USDA, and as they had
17 designed it, it provided for the animal welfare requirements
18 that we wanted at Walmart. And we felt like the program was a
19 very good program and potentially better than the UEP
20 Certified process program.

21 And the one thing that I do remember specifically,
22 though, is that it did not have a 100 percent requirement of
23 like all of your eggs and all of your farms. It was
24 specifically just the eggs that they were going to be selling
25 to Walmart from those farms that were going to sell to Walmart

1 would be certified.

2 Q. So your understanding is that one of the differences
3 between the PVP program and the UEP Program was that the UEP
4 Program had the 100% rule and the Sparboe program did not?

5 A. That is correct.

6 Q. And what was your reaction to that difference?

7 A. Um, it seemed reasonable to me. Um, you know, again, at
8 Walmart, we were specifically worried about the hens that were
9 laying eggs and how they were treated and that they were
10 treated within the specifications that we had, that they were
11 treated humanely.

12 But we didn't really believe that we should be
13 making decisions for other folks about what they should do in
14 terms of how they handled their business. Felt really that
15 should be something based on other customers' demands.

16 Q. Did you have any concerns about the fact that the Sparboe
17 Farms' program did not have a 100 percent compliance?

18 A. No, not at all.

19 Q. Did you make an effort to learn information or request
20 information from Sparboe about their program so you could be
21 educated about it?

22 A. We did, yes.

23 Q. And what do you recall in that regard? How did you go
24 about doing that?

25 A. Yeah, so we met with several folks from Sparboe,

1 specifically with the -- I'm probably saying his last name
2 incorrectly, Regensburger, I think is how you pronounce it.
3 He was the lead for Sparboe Farms. We met with Sparboe Farms
4 to understand and get a detail around their Process Verified
5 Program, and they specifically provided information to myself
6 and to Clay Adams, the buyer, in various ways to include
7 things like e-mail and other ways to get us information.

8 Q. Okay. And let me hand you, for identification purposes,
9 an exhibit that we have marked Plaintiffs' Exhibit 251.

10 A. Okay.

11 Q. Mr. Airoso, can you identify Exhibit 251 for us?

12 A. Yeah. This was an e-mail -- an e-mail chain between Lee
13 Regensburger, Clay Adams and myself.

14 Q. And how did the e-mail chain begin?

15 A. It began with me asking the -- for information regarding
16 their programs, the PVP program, specifically, and how it
17 related to animal health and welfare, and how I might be able
18 to explain that information to folks at Walmart.

19 Q. And is that the e-mail on May 28, 2008?

20 A. That's correct.

21 Let me verify that real quick, please.

22 Yes.

23 Q. I think you'll find yours is on the back of the chain.

24 A. Okay, yes.

25 Q. And is that -- is that an e-mail that you recall sending

1 at that time?

2 A. I do.

3 Q. And did you express your views about
4 Walmart's requirements at that time?

5 A. I did.

6 MR. OLSON: Your Honor, we move for the admission of
7 Plaintiffs' Exhibit 251.

8 MR. DESTEFANO: Objection, again, on hearsay
9 grounds, Your Honor.

10 THE COURT: Overruled.

11 MR. OLSON: Can we publish the document?

12 THE COURT: You may.

13 MR. OLSON: Thank you. Hopefully we're pulling it
14 up.

15 BY MR. OLSON:

16 Q. Okay, and let's look at the page 4 of the e-mail at the
17 top, which Mr. Airoso, that's the one you wrote that began the
18 chain; is that right?

19 A. Yes, sir.

20 Q. And the first line of the e-mail that you wrote says: As
21 we have told you, we do not expect you to become part of the
22 UEP.

23 What were you communicating there, sir?

24 A. Yeah, so I think Sparboe Farms had some questions about
25 whether or not we would force them to use the UEP Certified

1 process, and they had asked us some questions verbally and I
2 was responding to Lee letting him know that I did not expect
3 them to be part of the UEP Certified process, as we had put in
4 our specs, that we would allow several different potential
5 processes to be in effect.

6 Q. And then the second sentence states: However, I do have
7 to explain the differences internally to our senior
8 management, as some of the other producers will try to use the
9 UEP as a barrier to entry for you guys.

10 Do you see that?

11 A. Yes, sir.

12 Q. And what were you expressing there, sir?

13 A. Yeah, so I had already had communication with others
14 about this program and felt that since they were not part of
15 the UEP, that the UEP leadership, as well as our current
16 incumbent producers would try to say that not being part of
17 the Certified process would -- would disqualify them from
18 shipping to Walmart, that we should disqualify them. And so
19 based on that, I wanted to let them know that I felt like I
20 was going to have that pressure, and, therefore, I wanted to
21 be able to explain to my senior leaders at Walmart why we were
22 doing what we were doing and how the program matched up to the
23 UEP Certified process.

24 Q. Okay. And then did Mr. Regensburger respond with some
25 information?

1 A. He did.

2 Q. And generally, how would you describe the information he
3 provided?

4 A. Yes, so very forthcoming.

5 MR. DESTEFANO: I would object, again, on hearsay
6 grounds.

7 THE COURT: Sustained.

8 BY MR. OLSON:

9 Q. Okay, let's look at the cover e-mail, where you respond
10 to Mr. Regensburger on May 30, 2008.

11 Do you see that?

12 A. I do.

13 Q. Is that an e-mail that you wrote, sir?

14 A. It is. Yep.

15 Q. And do you recall writing this e-mail?

16 A. I do.

17 Q. And you say: Thanks for the note, I appreciate the
18 information. I think you have responded well. It helps me to
19 clarify to our internal folks. Walmart does not have a
20 preference for the UEP Program versus another program.

21 Do you see that?

22 A. That is correct, yes.

23 Q. And what were you expressing there?

24 A. Yeah, I was expressing to Lee the fact that we had made a
25 determination that the UEP Certified process was not the only

1 process that we would use, that we'd be willing to use other
2 processes similar to their PVP process, and that that's where
3 we were at.

4 Q. And do you recall whether Sparboe provided the types of
5 further information that you were interested in reviewing?

6 A. They did.

7 Q. And what was your reaction to the information you
8 received?

9 A. Yeah, so basically when we had a chance to review all of
10 the information, I determined that the PVP program was as good
11 or better than the UEP Program in many ways. The only -- the
12 only exception to that may be that it didn't cover 100 percent
13 of all flocks.

14 Q. The only difference between the programs?

15 A. That is correct. Where the UEP Program required
16 100 percent of all birds and all farms, where the PVP program
17 that Sparboe was potentially going to use did not have that
18 requirement. Other than that, it was at least good in every
19 level and in some cases better.

20 Q. Okay. So you mentioned that you were -- you had some
21 concerns that Walmart's current suppliers, having learned that
22 Sparboe was in the process, might use the UEP Certified
23 Program as a barrier to entry? Do you recall that?

24 MR. DESTEFANO: Objection.

25 MR. BIZAR: Objection.

1 MS. CRABTREE: Thank you.

2 THE COURT: Mr. Bizar is ready to go. He's now
3 thanked me twice.

4 See you all tomorrow.

5 MR. BIZAR: See you tomorrow.

6 (Court adjourned).
7

8
9 C E R T I F I C A T E

10 I certify that the foregoing is a correct transcript
11 from the record of the proceedings in the above-entitled
12 matter.
13

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16 _____
Kathleen Feldman, CSR, CRR, RPR, CM
17 Official Court Reporter

18 Date: _____
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